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## THE PROSECUTION OF ARCHIAS

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The oration delivered by Cicero in behalf of his friend Archias in the year following his consulship is justly celebrated chiefly, if not solely, on account of its glowing praise of literature. The argument on the legal points at issue occupies only about one-third of the whole speech. It is usually said that Cicero won his case so easily, and with so few words, that he seized the opportunity to devote the remainder of his time to discussing a theme that was always close to his heart. Doubtless owing to the great intrinsic interest of this portion of the speech, the fact that it was delivered in a court of law, and has a distinct legal aspect, is commonly neglected. And yet the case is an interesting one in several particulars from the legal point of view.

The facts of the life of Archias are given briefly by Cicero, so far as they relate to the legal questions involved. Archias was born of noble family about 120 B.C. in the Syrian city of Antioch. His name shows that he was of Greek parentage. In his own city he received a good education, for Antioch was an educational center as well as a noted commercial emporium. While a mere youth he traveled in Asia Minor and Greece, winning reputation as a scholar. Soon thereafter he made his way still farther west, and visited many of the Greek cities of southern Italy. Here, Cicero tells us, he was held in so high esteem that four cities presented him with their local citizenship. Of these four cities Tarentum was at that time a favored Roman colony, while Locri, Neapolis, and Rhegium were probably federated cities. The acquisition of citizenship in these cities would involve for him the acquisition of all the rights possessed by the residents of the cities, such as those of holding property and transacting business, of voting for local magistrates and senators, and of holding office in the cities. It would also grant him the right of holding property in Rome and of doing business there. Citizenship in the federated

cities, which was the limited form of citizenship called by the Romans *civitas Latina*, would not allow him, except under special conditions, to vote or hold office in Rome. But if he were a full citizen of a Roman colony, such as Tarentum, he would have all the rights denied to the citizens of federated cities. In the Roman colonies, however, only a small percentage of the inhabitants was composed of Romans with full *civitas Romana*, while the great majority, that is to say the original inhabitants of the cities, possessed fewer rights than did the Romans who had been sent out from Rome to form colonies there. It is incredible that a naturalized foreigner, as was Archias, should have received the full Roman citizenship in a Roman colony. In fact, it is very doubtful whether any authority less than that of the Roman people itself would suffice to make a grant of such extensive privileges. Had this grant been made to Archias he would henceforth have been a full Roman citizen, and no suit could ever have been entered against him for usurping civic rights.

In the consulship of Marius and Catulus, 102 B.C., he went to Rome, evidently with the intention of settling there. He became associated on terms of intimacy with some of the most influential families of the city, notably with the Luculli. When Marcus Lucullus went to Sicily as proconsul he was accompanied by Archias. Upon their return to Italy they stopped at Heraclea, a federated city, where Archias was granted the citizenship, while Lucullus was present at the ceremony and stood sponsor for him. Apparently, however, he did not remain long at Heraclea, but went again to Rome, without the loss of his citizenship at Heraclea. After the Social War Archias profited by one of the wisest laws ever enacted by a Roman assembly. This was the *lex Plautia-Papiria*, proposed and carried in 89 B.C. by two tribunes, M. Plautius Silvanus and C. Papirius Carbo. Cicero recites in full the provisions of this law, so far as they affected Archias, namely, that any citizen of a federated town should receive the full rights of Roman citizenship provided he registered his name with a praetor at Rome within sixty days after the enactment of the law. The grant of citizenship was supposed by the Roman constitution to be an act of the whole people, but this measure was passed by the plebeian assembly, and

accepted as law by the nation. It affords another interesting example of the constantly increasing seizure of the management of affairs by the common people. The law of Silvanus and Carbo was the beginning of the rapid extension of the franchise, completed by Caracalla, which tended to make the Roman Empire a unit.

It would be impossible to tell how many were affected by this law, but undoubtedly there were thousands of residents of Rome who had possessed Latin citizenship and were now eager to obtain the fuller privileges of Roman citizenship. Probably many came also from neighboring or distant towns to register. They would crave not so much to influence legislation by their votes, or to acquire the right to hold office, as to gain better facilities for conducting their business, and fuller access to the courts of law where they would be heard more equitably. In case they engaged in foreign trade or traveled abroad they would find their Roman citizenship of greater value than their former Latin citizenship. Archias complied with the terms specified, and was enrolled in the lists of his friend the praetor Q. Metellus. Twice thereafter he was absent from Rome, both times with L. Lucullus, the son of his former chief and friend in Sicily. He was in Asia with Lucullus in the campaigns conducted in 74 and the years following, and later in the war against the pirates of the Mediterranean, before Lucullus was superseded by Pompey.

In the year 65 the *lex Papia* was passed, according to which one who had used the rights of *civitas Romana* without legal qualification might be prosecuted. It contained also a clause which was probably impossible to enforce, to the effect that all foreigners in Rome who did not have residence in Italy should be expelled. The law was evidently intended to maintain the dignity of the Roman franchise and to prevent a recurrence of the possibility of packing the assemblies with Latin-speaking foreigners. Three somewhat similar laws had been passed earlier. The *lex Claudia* of 177 had enacted that Latins should be expelled from the city. The *lex Iunia* of 126 had involved the expulsion of all foreigners. The third law of this kind, the *lex Licinia-Mucia* of 95, was much less drastic. It forbade *peregrini* from exercising the functions of citizens, and appointed a special commission to prosecute those who had usurped

the rights of citizenship, and send them back to their own communities. Mild and reasonable as it might seem, this law was one of the immediate causes of the Social War. The innovation contained in the *lex Papia* was that it arranged for conducting prosecutions systematically. In the event of conviction there was apparently no penalty prescribed, but the person convicted was simply thereafter excluded from participation in the privileges of citizenship. This seems to be the logical conclusion from the words of Cicero in the case of Balbus, the only other case of the kind where we have full particulars. There Cicero says only that the civil status of Balbus was threatened. Once or twice he speaks of the punishment of Balbus, but in such a way as to leave the impression that the punishment consisted simply in the loss of the privileges he had formerly enjoyed. There is no indication that Balbus would suffer in any other manner if convicted.

Under the *lex Papia*, action was brought against Archias by one Grattius, who is otherwise unknown. It is supposed that he was the tool of a faction opposed to the Luculli, and that through him they attempted to annoy the Luculli by bringing action against one in whom this family was interested. The trial of Balbus, presumably of the same form as that of Archias, is called a *iudicium publicum*, which should be synonymous with *quaestio perpetua*. But we know of no law establishing such a *quaestio*, unless it was done by the *lex Papia* itself. This would be in accordance with the Roman practice of defining an offense and indicating the mode of treating cases arising from it in the same enactment. The trial of Archias is also called a *iudicium publicum* and was conducted before a praetor and *iudices*. The only known form of trial in which these were both present is the *quaestio perpetua*. It seems necessary, therefore, to add a *quaestio de civitate* to the list of *quaestiones perpetuae* already recognized. A scholiast has given us the pleasant information that in this trial Quintus Cicero was the praetor before whom his more illustrious brother, Marcus, made the principal speech for the defense.

Grattius endeavored to establish four points against Archias:

1. That Archias was not a citizen of Heraclea, and could produce no official documents in support of his claim to citizenship there.

2. That he had not legal residence in Rome.
3. That he had not made his declaration before a praetor, but that his name had been inserted fraudulently in the praetor's list.
4. That he was not recognized as a citizen, inasmuch as his name did not appear in the censors' lists.

Cicero meets these four points in order in the following way:

1. That Archias was not a citizen of Heraclea:

a) His name had appeared in the records of the city, but these could not be produced inasmuch as they had been burned in the course of the Social War. Rome required all federated states to keep a list of their available military strength, and of those whose property might be assessed. Such are the lists which Livy refers to as *formulae*. From these *formulae* Rome made up her auxiliary land forces, and levied them upon declaration of need by the senate and consuls. If Archias, or any other citizen of an allied town, proved his claim to Roman citizenship he would be relieved from the possibility of being obliged to serve in these land forces. It is interesting to note that the records of Heraclea were burned prior to the enactment of the *lex Plautia-Papiria*, and that if this point were pressed and acknowledged no citizen of Heraclea could acquire *civitas Romana*.

b) M. Lucullus, being summoned as a witness, swore that he had been present when Archias received the citizenship at Heraclea, and had acted as his sponsor on that occasion. We have no means of knowing what the ceremony of naturalization was, or what part Lucullus played in it, but his evidence as a participator in the ceremony would be very strong.

c) Envoys from Heraclea were present at the trial with *mandata* and *publicum testimonium*. The *mandata* were oral instructions from the senate of the city, directing the envoys, called *legati*, as to what facts they should state by way of evidence at the trial. The *publicum testimonium* was the official declaration of the senate, submitted in writing, to be presented by the envoys simply as an official document bearing the authority of the city.

d) Archias was confident that the evidence of his citizenship at Heraclea would be accepted, and therefore made no attempt to establish the fact of his citizenship in other cities. This argument

would, of course, not add to the strength of his claims, but it might have its moral effect upon a jury, whether ancient or modern. The supposition is that he could prove his Latin citizenship in Tarentum, or in Naples, or in one of the other cities. Since, however, he had registered as from Heraclea it would be of no avail twenty-five years later to set up a different claim. But Cicero skilfully utilizes the point to impress the jury.

2. That Archias had not legal residence in Rome: Cicero says that Archias held property in Rome, and that all his business for many years had been transacted there. The evidence offered by the defense supplied proof that in his business relations Archias was recognized as possessing *ius commercii*, characteristic of *civitas Latina*, if not of *civitas Romana*. Otherwise he could not have been a property holder in Rome.

3. That Archias did not make his declaration before a praetor: But his name was found in the records of Metellus, and as these records were strictly honest the claim that the name of Archias was entered fraudulently is groundless. Cicero recites the incident of Metellus going before the praetor Lentulus and *iudices* with the complaint that a name had been erased from his list. This would mean that he was prosecuting some person for having tampered with his books. His strictness contrasts strongly with the negligence of Appius and with the still worse faults of Gabinius.

4. The name of Archias did not appear in the censors' lists:

a) In the censorship of Julius and Crassus, the first censors after the enactment of the *lex Plautia-Papiria*, the census was not taken. This is another indication of the ineffectiveness of the office of the censors in the last century of the Republic.

b) At the time of the next censors he was with L. Lucullus in Asia, and therefore could not be enrolled.

c) At the time of the last censors he was with Lucullus in the army.

These points naturally end the argument for the defense, but before Cicero rested his case he added a few other facts. These new facts merely serve the purpose of showing that Archias had used the rights of citizenship unchallenged, or better, that his claims to citizenship had been recognized by the officials in Rome.

Perhaps Cicero means to imply that these officials had investigated the facts, and had been convinced of the validity of his claim.

The points raised are three:

1. He had made wills according to *nostrae leges*, that is, according to the *ius civile*.

2. He had received inheritances, or legacies, from Roman citizens. These two points satisfactorily prove the same thing, namely, that Archias was not a *peregrinus*. No foreigner had the legal right to make a will in Rome according to the Roman forms and have it accepted as valid. The more formal method of making a will necessitated the presence of a Roman citizen to superintend the ceremony, and also the presence of at least five witnesses who were Roman citizens. By a less ceremonious method a will was valid only if attested by the seals of seven citizens who witnessed the signature of the testator. And Gaius tells in the second book of the *Institutes* that inheritances and legacies could not be received by foreigners or Latins, for these means of acquiring property were available only to those who had the right to make wills, that is, to citizens.

3. He had been presented by Lucullus at the treasury to receive rewards for services. These services were probably rendered in the army, but we cannot tell what they were. Nor is the significance of the whole matter by any means clear. The natural inference is that only a citizen could be so honored, but on this point we have no information.